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## *Class Counsel*

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

KIM ALLEN, LAINIE RIDEOUT  
and KATHLEEN HAIRSTON, on  
behalf of themselves, all others  
similarly situated, and the general  
public.

### **Plaintiffs.**

## SIMILASAN CORPORATION.

**Defendant.**

Case No.: 3:12-cv-376-BTM (WMC)

## CLASS ACTION

## **PLAINTIFFS' FRCP RULE 26(a)(3) DISCLOSURES**

Judge: Hon. Cynthia A. Bashant  
Roon: 4B (Schwartz Courthouse)

Complaint Filed: February 10, 2012

Trial Date: March 29, 2016

## Pretrial Conference: February 1, 2016

Annual Conference Time: 11:00 am

1 Pursuant to Federal Rule of Civil Procedure (“FRCP”) 26(a)(3) and this Court’s  
2 Scheduling Order entered April 16, 2015 [ECF No. 149], Plaintiffs Lainie Rideout and  
3 Kathleen Hairston (“Plaintiffs”) hereby submit the following pretrial disclosures:

4 **I. WITNESSES**

5 Pursuant to FRCP 26(a)(3)(A)(i)-(ii), Plaintiffs set forth the following names,  
6 addresses, and telephone numbers of the prospective witnesses, excluding impeachment  
7 witnesses, that it expects to present or that they expect to present or that they may call  
8 if the need arises. Plaintiffs reserve the right to call any witnesses designated by  
9 Defendant. Plaintiffs further reserve the right to supplement or amend its witness list  
10 through the time of trial, including the right to supplement or amend based on any  
11 rulings provided by this Court.

<b>Witness Name</b>	<b>Address and Telephone Number</b>	<b>Presented by Deposition</b>
Lainie Rideout	Available through Counsel	No
Kathleen Hairston	Available through Counsel	No
Aron Brown	1805 Shea Center Drive, Suite 270 Highlands Ranch, CO 80129 (303) 539-4060	Yes
Kimberly Stark	1805 Shea Center Drive, Suite 270 Highlands Ranch, CO 80129 (303) 539-4060	Yes
Haley Ball	1805 Shea Center Drive, Suite 270 Highlands Ranch, CO 80129 (303) 539-4060	Yes
Andreas Dehmel	1805 Shea Center Drive, Suite 270 Highlands Ranch, CO 80129 (303) 539-4060	Yes

Dr. Jon A. Krosnick	Stanford University 432 McClatchy Hall 450 Serra Street Stanford, CA 94305 (650) 725-3031	No
William Ackerman	350 S. Figueroa Street, Suite 900 Los Angeles, CA 90071 (213) 576-1808	No
Noel R. Rose, M.D., Ph.D.	The Johns Hopkins Medical Institutions 615 N. Wolfe St., MMI E5014 Baltimore, MD 21205 (410) 502-0759	No
Robert J. Lee, Ph.D.	College of Pharmacy, The Ohio State University 542 LM Parks Hall 500 W. 12 <sup>th</sup> Avenue Columbus, OH 43210 (614) 292-4172	No

## **II. EXHIBITS**

Pursuant to FRCP 26(a)(3)(A)(iii), Plaintiffs set forth the documents and exhibits they expect to offer at trial or that they may offer if the need arises, excluding those offered only for impeachment purposes. Where an exhibit is described as an email, the exhibit includes all attachments to that email.

Plaintiffs reserve the right to supplement or amend their exhibit list through the time of trial, including the right to supplement or amend based on any rulings provided by this Court, and to use additional documents as necessary during cross examination of Defendant's witnesses. Plaintiffs further reserve the right to use any admissions from the pleadings, briefs, motions, discovery responses, other documents filed, and exhibits thereto.

1      **List of Plaintiffs' Exhibits:**

No.	Date Marked	Date Admitted	Description
1.			Aron Brown Deposition Exhibit Ex. 1 SIM 00000407-408
2.			Aron Brown Deposition Exhibit Ex. 2 SIM 00027279-27281
3.			Aron Brown Deposition Exhibit Ex. 3 "Pink Eye Relief" packaging and "Walgreens Homeopathic – Pink Eye Remedy" packaging
4.			Kimberly Stark Deposition Exhibit Ex. 1 – Australian Government National Health and Medical Research Council "NHMRC Statement: Statement on Homeopathy"
5.			Kimberly Stark Deposition Exhibit Ex. 2 SIM 00027122-00027123
6.			Kimberly Stark Deposition Exhibit Ex. 3 SIM 00034743-34744
7.			Haley Ball Deposition Exhibit 1 SIM 050386-050389
8.			Haley Ball Deposition Exhibit 2 SIM 050390
9.			Haley Ball Deposition Exhibit 3 SIM 00033472
10.			Haley Ball Deposition Exhibit 4 Hyland's Arnica 30x Packaging
11.			Haley Ball Deposition Exhibit 5 Similasan Dry Eye Relief packaging
12.			Haley Ball Deposition Exhibit 6 Similasan Earache Relief packaging
13.			Andreas Dehmel Deposition Exhibit 1 Similasan Corp. Statements of Operations and Retained Earnings 2008-2014

1	14.		Andreas Dehmel Deposition Exhibit 2 Similasan Corp. Statements of Operations and Balance Sheets 2008-2014
2	15.		Andreas Dehmel Deposition Exhibit 3 Similasan At-Issue Products – Advertised Online Retail Prices as of April 22, 2014
3	16.		Andreas Dehmel Deposition Exhibit 4 Calculation of Retail Sales to Putative Class
4	17.		Andreas Dehmel Deposition Exhibit 5 Similasan Summary of Profit for California
5	18.		Expert William Ackerman Production ACKERMAN000001- 000017
6	19.		Expert Jon Krosnick Production KROSNICK000001-000106
7	20.		Expert Lee's Production LEE_SIMILASAN00001-00248
8	21.		Expert Rose Production, ROSE000001; ROSE_SIMILASAN00112-00120
9	22.		Rebuttal Report of William R. Ackerman Dated May 12, 2014
10	23.		Supplemental Expert Report of William R. Ackerman, CPA Dated July 27, 2015
11	24.		Expert Report of Dr. Jon A. Krosnick Dated July 23, 2015
12	25.		Second Expert Report of Dr. Jon A. Krosnick Dated May 12, 2014
13	26.		Expert Report of Dr. Robert J. Lee, Served on August 3, 2015
14	27.		Declaration of Noel R. Rose, M.D., Ph.D. Dated May 22, 2014
15	28.		Expert Report of Dr. Noel R. Rose, Served on August 3, 2015

1	29.		Third Amended Complaint (Doc. No. 58)
2	30.		Marketing Document from Similasan SIM00000001-2
3	31.		2010 Marketing Plan SIM00000011 (powerpoint)
4	32.		2011 Q1 Tactics (powerpoint) SIM00000014
5	33.		Earache, Nasal and Well Being Data Ending 6.13.09 (powerpoint) SIM00000018
6	34.		Active Ingredients SIM 00000021
7	35.		2010 Price List SIM00000610; 00005191-5192
8	36.		2012 Summary of Profit SIM00030134-30140
9	37.		Audited Financials SIM00027173-27188
10	38.		Similasan Brand Position and Packaging Design Research (powerpoint) SIM00016475
11	39.		Similasan Branding Project (powerpoint) SIM00020097
12	40.		Minter + Reid Eye Drops Product Concept June 2010 SIM00026225
13	41.		Label Allergy Eye Relief SIM0003874
14	42.		Label Allergy Eye Relief SIM00012643
15	43.		Label Pink Eye Relief SIM00003875
16	44.		Label Pink Eye Relief SIM00014814
17	45.		Label Nasal Relief SIM00005615
18	46.		Label Dry Eye Relief SIM00012363
19	47.		Label Sinus Relief SIM00012641
20	48.		Label Earache Relief SIM00012642

1	49.		Sales and Price Documents SIM0000004-20; 0000525; 0000558
2	50.		Marketing Materials SIM00000532; 543; 547
3	51.		Market Research SIM 00016477
4	52.		Similasan Website SIM 00015552- 15556
5	53.		Pictures of labels of products SIM 00010984; SIM 00010987 SIM 00010988; SIM 00010991
6	54.		Description of product SIM 00010974
7	55.		Similasan Explanation of Product SIM 00005778
8	56.		Labels of Products SIM 00004750- SIM 00004755
9	57.		Submissions to Department of Health SIM 00004417; SIM 00004422; SIM 00004426 SIM 00004432; SIM 00004436 SIM 00004442; SIM 00004449
10	58.		Marketing campaign with gross analysis SIM 00001186
11	59.		Marketing Charts SIM 00001172- 1177
12	60.		Target Audience Matrix SIM 00001096
13	61.		Ad Matrix SIM 00000709-731
14	62.		2009 Mass Marketing Sales Plan SIM 00000740
15	63.		2008 Price List SIM 00000557
16	64.		Marketing Plans 2011 SIM 00000234-239
17	65.		Marketing literature, analysis and flow charts SIM 00000122-124
18	66.		List of Ingredients SIM 00001204; SIM 00003957
19	67.		Similasan Financial Records

1	68.		Defendant's Similasan Corporation Responses Interrogatories (Set 1)
2	69.		Defendant's Similasan AG's Responses Interrogatories (Set 1)
3	70.		Defendant's Similasan Corporation Responses Interrogatories (Set 2)
4	71.		Defendant's Similasan Corporation Responses to Request for Admissions (Set 1)
5	72.		Packaging messaging SIM 00018548
6	73.		Edits to labels SIM 00018553-18555
7	74.		Label changes SIM 00018556-18560
8	75.		Location of products sold and distribution stores SIM 00018668-SIM 00018674
9	76.		Instructions how to use product SIM 00018677
10	77.		Documents identifying science claims of products SIM 00000062-SIM 00000095
11	78.		Claim Substantiation for Ear Ache Relief SIM 00003951-3953
12	79.		Claim Substantiation for Pink Eye Relief SIM 00003954
13	80.		List of Ingredients SIM 00004181-4184; SIM 00005280
14	81.		Active Ingredients from HPUS SIM 00005405
15	82.		Product Comparison 7-3-14.pptx SIM 00042053-42054
16	83.		Weekly Point of Sale details SIM 00042075 - SIM 00042079
17	84.		Similasan profile for Chain Drug Review.msg SIM 00042099
18	85.		Similasan_Key Findings_July 22 2014.pdf SIM 00042184
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1	86.		July 2014 Monthly Marketing / Sales Recap .msg SIM 00042263
2	87.		August 2014 Similasan Price List Mass.xlsx SIM 00042295
3	88.		August 2014 Promotions & Marketing_8.21.14.pdf SIM 00042350
4	89.		Weekly sales numbers October 10 2014 SIM 00042501
5	90.		10/5/14 Snippet & Monthly Overview SIM 00042573-74
6	91.		Weekly sales numbers November 21 2014 SIM 00042590
7	92.		Weekly sales numbers December 26 2014 SIM 00042699
8	93.		Weekly sales numbers January 16 2015 SIM 00042771
9	94.		Weekly sales numbers March 6 2015 SIM 00043207
10	95.		Weekly sales numbers April 17 2015 SIM 00043799
11	96.		Weekly sales numbers April 24 2015 SIM 00043899
12	97.		Similasan company info.pptx SIM 00043811
13	98.		Similasan_AGM SIM 00043814
14	99.		Eye slide for CVS SIM 00043927
15	100.		Weekly sales numbers May 8 2015.xlsx SIM 00043952
16	101.		USA New Packaging Status 01.10.14 SIM 00044365
17	102.		Similasan Spreadsheet SIM 00044857
18	103.		Similasan Weekly Unit POS Sales Detail 07.13.14. SIM 00045056
19	104.		May 2014 Similasan Price List Mass.xlsx SIM 00045072
20	105.		SPINS Data - November 2014 SIM 00045217-45218

1	106.		Emerson Price List Spreadsheet SIM 00045432-00045433
2	107.		FTC emails message SIM 00045860-62
3	108.		2014 Marketing Budget Plan HBA 6-9-14 SIM 00046033
4	109.		Marketing plan 2014 SIM 00046836
5	110.		2015 Big Spreadsheet Marketing Budget 2015 SIM 00046905
6	111.		2015 marketing budget overview SIM 00046950
7	112.		CVS Eye Ear November 2014 SIM 00047276
8	113.		March 2015 Promotions Marketing 3.4.15 new design SIM 00048863
9	114.		Plaintiffs' Production PLSimilasan000001-000181
10	115.		Plaintiffs' Production PLSimilasan00000218
11	116.		Plaintiffs' Production PLSimilasan00000232-234
12	117.		Plaintiffs' Production PLSimilasan00000244-245
13	118.		Plaintiffs' Production PLSimilasan00000251-252; 255
14	119.		Plaintiffs' Production PLSimilasan00000291-1642
15	120.		Clinical Overview SIM0031385- 31390
16	121.		Continuing Education 12-4-201 SIM0029802-29829
17	122.		Study re: eye drop effectiveness SIM00019538-40
18	123.		Label SIM00014121
19	124.		Email SIM00016671-16685
20	125.		Letter to FDA SIM00029514- 29539
21	126.		Internal memo 6/8/11 SIM0029542

1	127.			FTC letter 6/17/2013 SIM00031256
2	128.			Letter from Similasan to FDA 7/6/2011 SIM00029967-29970
3	129.			Creative Brief Template 10/22/2008 SIM00019647-48
4	130.			2013 Business Plan (native)
5	131.			TRIG Similasan Claims Test February 2013 (native)
6	132.			Email re: Claims Set Up and Survey SIM00031806-31823
7	133.			Email from Johanna SIM00016649
8	134.			Email From Dora Newlin string SIM00031373-31378
9	135.			Similasan Claims SIM32324- 32332
10	136.			Emails from Aron Brown string SIM 00005686-5691
11	137.			Doctor Recommended Form SIM 00029881
12	138.			FDA Correspondence SIM0029725-26
13	139.			Document on Similasan Claims SIM00030831-33
14	140.			Active ingredients SIM00005339- 5342
15	141.			Justification of Combination Productions SIM00031379-31384
16	142.			Creative Brief for Ear Relief SIM00030804-05
17	143.			Product Ingredients SIM00020063- 64
18	144.			Dan Quail Deposition Exhibit 2 – SIM 00040841
19	145.			Dan Quail Deposition Exhibit 3 – Exhibit 1 to the Third Amended Complaint
20	146.			Dan Quail Deposition Exhibit 4 – Email from Susan Maynard to Sherrod Bott and John Crain re:

1			Ingredient to Ingredient List, Dated March 10, 2008
2	147.		Dan Quail Deposition Exhibit 5 – SIM 00014592
3	148.		Dan Quail Deposition Exhibit 6 – SIM 00010169
4	149.		Dan Quail Deposition Exhibit 7 – Claim Substantiation for Similasan, Pink Eye Relief eye drops
5	150.		Dan Quail Deposition Exhibit 8 – Email from Lauren Wittenberg to Dan Quail, Haley Ball, Yann Pigeaire, and Don Steiert re: Similasan Irritated Eye v. TRP Sales Performance, Dated January 20, 2015
6	151.		Dan Quail Deposition Exhibit 9 – Similasan USA Page
7	152.		Dan Quail Deposition Exhibit 10 – SIM 00025167; SIM 00025344
8	153.		Dan Quail Deposition Exhibit 11 – Weekly Sales Number 2014 9/30/2014
9	154.		Dan Quail Deposition Exhibit 12 – Rating chart for products
10	155.		Dan Quail Deposition Exhibit 13 – Email from Jure Bature to Haley Ball, cc: Dan Quail re: Budget Marketing 2014 FINAL, Dated October 23, 2013
11	156.		Dan Quail Deposition Exhibit 14 – Email from Joanne Sheean to Melissa Mursch, Dan Quail and Jure Bature re: 2009-2013 Marketing Spend/Tactics, Dated February 15, 2014
12	157.		Dan Quail Deposition Exhibit 15 – Similasan Facts and Figures presentation by Dan Quail

158.			Dan Quail Deposition Exhibit 16 – 2013 Business Plan (Version 9/27/2012)
159.			Dan Quail Deposition Exhibit 17 – SIM 00003768-00003770; SIM 00027759; SIM 011066-011068; SIM 00044148-00044150; SIM 00016472; SIM 005550

## GOMEZ TRIAL ATTORNEYS

Dated: December 28, 2015

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